Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

In re ROBERT G. NEAL, Petitioner

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

Respectfully Submitted By:

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34 pp

QUESTION(S) PRESENTED

Whether a pretrial detention of over nine (9) years without being afforded any form of trial, while solely and continuously held in the custody of the charging authorities, presents a constitutional violation of due process and equal protection under the law, pursuant to the United States Constitution, Amendments V, and XIV.

NOTE This is an original petition for writ of habeas corpus.

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ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, **Robert G. Neal**, unrepresented by counsel, pro se, and through the composition assistance of NEXT OF FRIEND, pursuant to **United States Supreme Court Rule(s) 20**, and herein prays this Most Honorable High Court to grant his petition and issue a writ of habeas corpus, commanding the State of Florida to immediately release and perpetually discharge the Petitioner from the illegal (pretrial) incarceration under which he now suffers, and has suffered, continuously, for over eight (8) full years, by and through the responsible parties of: The Honorable Lawton Chiles, Governor of the State of Florida, The Capitol, Tallahassee, Florida 32399-0001; The Honorable Robert A. Butterworth, Attorney General of the State of Florida, The Capitol, Tallahassee, Florida 32399-1050; and The Honorable Jerry Hill, State Attorney for the Tenth Judicial Circuit Court, Polk County, State of Florida, Post Office Box 9000, Drawer S.A., Bartow, Florida 33831; by whom the Petitioner is being held in pretrial detention, without any form of trial, facing criminal charges by the State, said continued detention in violation of Petitioner's **U.S. Const. amend. VI** right(s) to speedy trial, and the resultant violations therein of the Petitioner's **U.S. Const. amend V, VIII, and XIV** right(s) to due process, protection(s) against cruel & unusual punishment, and the guarantee to equal protection under the law, respectively.

I.
BASIS FOR INVOKING JURISDICTION

This Court has jurisdiction to issue a writ of habeas corpus under **U.S. Const. article I, section 9, cl. 2; 28 U.S.C. section 1651(a); 28 U.S.C. sections 2241(a) & (c)(3).** Habeas Corpus is the proper remedy to challenge an unlawful detention pending trial in a criminal case. See e.g., Ex Parte Royall, 117 U.S. 241 (1886); United States ex rel. Parish v. Elrod, 589 F.2d 327 (7th Cir. 1979). The extraordinary and enormous length of time since the Petitioner's arrest,

to present, has been spent in the pretrial detention and/or incarcerative custody of the State of Florida, without any form of trial, for over eight (8) full years. Such an inconceivable length of pretrial detention without trial having already taken place, warrants **exceptional circumstances in the extreme**, and to such an extent where the Petitioner believes such to be unprecedented in the annals of American Jurisprudence. As such, no remedy other than habeas corpus, from this Most Honorable High Court, would be adequate to prevent the Petitioner's continued unlawful detention. For the Petitioner to seek redress in the Federal District Court and/or the Federal Circuit Court of Appeals, the resulting additional elongation of his illegal pretrial detention, and hence, grievous injury from such, would continue in its extreme oppression to such a point (with anticipated appeals, etc., from the State even if the Petitioner was granted a judgment of relief from a lower court), that this application for the Court's rare invocation of its discretionary jurisdiction becomes an absolute necessity, in aid of its appellate authority, so as to prevent any extensive and repetitive lower tribunal process. See e.g., Ex Parte Grossman, 267 U.S. 87 (1925); Harris v. Nelson, 394 U.S. 286, rehearing denied, 394 U.S. 1025 (1969); Preiser v. Rodriquez, 411 U.S. 475 (1973); **28 U.S.C. section 2242; United States Supreme Court Rules 20.1, & 20.4(a).**

II.
EXHAUSTION OF STATE REMEDIES

Petitioner filed a petition for ALL WRITS NECESSARY with the Florida Supreme Court, addressing his speedy trial claim, on January 19th, 1996 (which the Florida Court addressed as a petition for writ of habeas corpus). Said petition was summarily denied, on May 29th, 1996. [redacted] As this was/is a final ruling of the State's Highest Court, no other remedy exists within the State of Florida's judicial system to address this illegal (pretrial) incarceration of the Petitioner. See e.g., Ex Parte Royall, supra; Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1973).

III.
FACTS UPON WHICH THE PETITIONER RELIES

On July 11th, 1989, the Petitioner was taken into the custody of the State of Florida, Tenth Judicial Circuit Court, Polk County, Florida, by and through the Polk County Sheriff's Department, on various charges of: sexual battery on a child under twelve (12) years of age; engaging a child in a sexual activity; lewd, lascivious, and indecent act upon a child; and lewd assault/activity in the presence of a child.

Petitioner does (and consistently) maintain(s) his complete innocence in these instant criminal charges held against him.

The State of Floirda formally charged the Petitioner with the above referenced offenses, by direct information, on July 26th, 1989.

Petitioner has remained in the pretrial detention and custody of the charging authorities (exclusively) since his arrest, on July 11th, 1989.

Petitioner has been represented by private counsel(s) throughout the majority of his "ongoing" process in the Florida court(s)/Court. Public Defenders were, at times, appointed in the interim periods of the Petitioner acquiring new representation (subsequent to the Petitioner's dismissal of previous counsel for cause of improper and/or misrepresentation).

During this extraordinarily long "ongoing" process in the Florida judicial system, the "trial" court has found the Petitioner incompetent to stand trial, and has committed the Petitioner to the State Department of Health and Rehabilitative Services (hereinafter, H.R.S.) for evaluation and treatment. This was done/ordered on two separate occations from which the Petitioner was immediately returned to the "trial" court declared by the H.R.S. officials as competent to stand trial.

Between February of 1992 and August of 1994, no further question was brought regarding the Petitioner's competency. The Petitioner was (and has constantly remained) in the pretrial detention and jurisdiction of the "trial" court throughout this "competency" process. In January of 1995 the "trial"

court conducted yet another competency hearing, finding the Petitioner competent to stand trial. No trial occurred. Later, in October of 1996, the "trial" court (without any examinations by medical and/or psychological experts) declared the Petitioner mentally ill and commanded the Petitioner into an involuntary commitment, "for treatment to restore competency." Petitioner, against his expressed wishes, remains under said order of involuntary committment at the time of this writing.

Through the successive representations of counsel, both privately retained and court appointed, Petitioner has been afforded only one (1) bond hearing (which was denied), and has never even remotely approached the start of any trial. These legal "defense" representatives have moved for numerous continuances (with the State and the court agreeing to such) causing this extreme and unreasonable delay in gaining a trial, with "defense" counsel even going so far as to submitt a written waiver of speedy trial, without any approval, consultation, signature, and/or understanding of any such waiver by the Petitioner (additionally, the court never examined the Petitioner as to his knowing, intelligent, and/or voluntary waiver of such rights).

Formal complaints to the Florida Bar regarding these representations by defense counsel have been entered by the Petitioner, with one such complaint still pending (disciplinary) action.

The Petitioner currently remains under the duress of an involuntary commitment, fully aware of his conditions and entirely competent in proceeding with his affairs, as this instant application for extraordinary relief should evidence.

IV.
NATURE OF RELIEF SOUGHT

The nature of relief sought by this petition is an issuance of a writ of habeas corpus, commanding the State of Florida, by and through its agents, Governor Lawton Chiles, Attorney General Robert A. Butterworth, and State Attorney Jerry Hill, to release the Petitioner from its/their illegal custody, forthwith, issuing special instructions that the Petitioner be perpetually discharged from the instant cause of

action redressed herein - Tenth Judicial Circuit Court of the State of Florida, Polk County, Criminal Division Case Number: CF 89-3153-A1-XX.

V.
ARGUMENT

PETITIONER IS ILLEGALLY INCARCERATED IN VIOLATION OF CONSTITUTIONALLY GUARANTEED SPEEDY TRIAL RIGHT(S).

Petitioner contends that his constitutional right(s) to a speedy trial has/have been grossly violated by the State of Florida. **U.S. Const. amend. VI; Fla. Const. article 1, section 16 (1968).**

Petitioner's pretrial detention of over eight (8) full years, without any trial whatsoever, is an obscene abridgement of the Petitioner's constitutional right(s) to speedy trial, as well as in opposition to the controlling authorities regarding such right(s) to speedy trial. See e.g., Barker v. Wingo, 407 U.S. 514 (1972); Dickey v. Florida, 398 U.S. 30 (1970); Doggett v. United States, 505 U.S. 647 (1992).

What gives absolute distinction to this instant petition in relationship to the case citations of authority already shown, is the specific and singular fact that the Petitioner has been continuously incarcerated in a status of pretrial detention for over eight (8) full years, by the charging authorities. In every other major opinion of the Court that this Petitioner is able to find regarding the issue of speedy trial, either the Petitioner therein was enlarged on bond, not yet in custody, or was in the lawful custody of another jurisdiction. Not so here. The Petitioner in this instant cause is neither free on any form of bond, nor in the custody of any "foreign" jurisdiction. Petitioner is, and has indeed continuously been, in the full and complete custody, specifically and singularly, of the charging agency/authority. This fact alone must/most certainly denote(s) **exceptional circumstances in the extreme**, and as such, cries out for the rare invocation of this Court's discretionary jurisdiction for original extraordinary relief. See e.g., Ex Parte Hudgings, 249 U.S. 378 (1919); Matter of Huff, 197 U.S. 488 (1905).

With such exceptional circumstances resulting from this extraordinary and extreme length of time since arrest without any form of trial, any lower tribunal application(s) subject to the time factors of such process and their subsequent appellate rights/process available to both parties therein, must be considered beyond any adequate relief obtainable in any form and/or fashion therein. Only the ultimate consideration of this Most Honorable High Court can achieve the proper redress to such, and serve the best interests of justice. Hudgings, id.; Huff, id..

Petitioner fully believes his length of pretrial detention without any form of trial, is unprecedented, and that the prime interests of justice absolutely demand the immediate attention of only this nation's highest judicial authority.

This instant cause presents a very rare opportunity for the Court to address the constitutional issue at hand, "which is the rule, rather than the exception," in the State of Florida's Circuit Court judicial process, and by and through this instant cause, bring a much needed admonition to the "individual potentate" attitudes and actions of the Florida Circuit Courts, wherein the blatant abuse of power, under the color of law, based upon biased political convictions and/or the current public emotional state of mind, is exhorted - rather than the properly objective constitutional and judicial "enlightenments" which are supposed to be the basis for all court decisions, resultant from the framework, tenets, and canons of Law.

"When the rights of the one are lost, then the many shall suffer." [Henry David Thoreau].

Therefore, it is of great urgency, importance, and in the best interests of justice, not only to the Petitioner, but to the public as a whole, that the Court should accept this instant petition for its immediate review, and pray, grants the relief requested herein.

> [T]he great and leading intent of the Constitution and the law must be kept constantly in view upon examination of every question of construction. That

intent, in respect to the writ of habeas corpus, is manifest. It is that every citizen may be protected by judicial action from unlawful imprisonment.

Ex Parte Yerger, 75 U.S. 101 (1868).

[I]n dignity, in power and in finality and effect of their adjudications the United States Circuit Courts of Appeals are inferior to the Supreme Court of the United States . . . . The grant of power to issue the writ of habeas corpus is [] conductive to a wise and speedy administration of justice. It prevents confusing and conflicting opinions of judges of inferior courts and tends to secure uniformity and certainty in the administration of law of personal liberty. It enables those who deem themselves deprived of their freedom in violation of their rights to secure speedy relief, if they are entitled thereto, without the vexatious delay and expense of an application to a subordinate court or judge and an appeal . . before [a definitive final order] can be obtained.

Ex Parte Moran, 144 F. 594 (8th Cir. 1906) (emphasis added).

The very purpose of habeas corpus is to test the legality of detention. Without the benefit of (speedy) trial, to be in custody, is in violation of due process rights under the **Fifth Amendment to the United States Constitution** (and collaterally, the **Fourteenth Amendment**), and his/her right to speedy trial under the **Sixth Amendment**. See e.g., United States v. Tootle, 65 F.3d 381 (4th Cir. 1995); Arias v. Rogers, 676 F.2d 1139, @1142 (7th Cir. 1982).

[P]retrial petitions for habeas corpus, 'are properly brought under **28 U.S.C. section 2241**, which applies to persons in custody regardless of whether judgment has been rendered and regardless of the

present status of the case pending against him.'

Tootle, id., citing, Dickerson v. Louisiana, 816 F.2d 220, @224 (5th Cir. 1987), cert. denied, 484 U.S. 956 (1987).

Habeas corpus lies to test proceedings so fundamentally lawless, that imprisonment and/or pretrial detention pursuant to such proceedings is not merely erroneous, but is void.

The exhaustion doctrine of Ex Parte Royall, supra, is a judicially crafted instrument which balances the important interests of federalism and the need to preserve the writ of habeas corpus as a swift and imperative remedy in cases of illegal restraint or confinement. See e.g., Braden, supra. By and through Petitioner's original application to the State of Florida's Supreme Court for "all writs necessary" (and taken for review by said Court as a petition for writ of habeas corpus), no other remedy therefore remains within the State judicial sustem whereby the Petitioner can apply for and/or gain his legal redress/relief. The government is presumed to know the law, and hence, its ministerial duties and/or responsibilities to uphold the constitutional rights of the accused (i.e. due process and speedy trial).

> [A]lthough a great many accused persons seek to put off the confrontation as long as possible, the right to prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial.

Dickey, supra, @37, 38 (footnote omitted).

"The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality in the need to have charges promptly exposed." Id., @37; see also, Smith v. Hooey, 393 U.S. 374 (1969); Murray v. Wainwright, 450 F.2d 465, @471 (5th Cir. 1971).

Again, what distinguishes this instant cause as extreme and exceptional, is that the Petitioner is/has been continuously in the direct custody of the charging authorities.

The right to speedy trial is a unique right endemic to both the government and the accused. Although initial onus rests on the prosecution to schedule a defendant in a criminal cause for trial, the courts themselves are not excluded from the obligation to give the defendant a speedy trial. When an accused is do deprived of this right to a speedy (and public) trial, he suffers irreparable prejudice from the mere loss of the right. See e.g., Hoskins v. Wainwright, 485 F.2d 1186 (5th Cir. 1973); United States v. Colitto, 319 F.Supp. 1077, @1083 (E.D.N.Y. 1970); United States v. Upton, 921 F.Supp. 100, @103 (E.D.N.Y. 1995).

Petitioner, being a pretrial detainee for over eight (8) full years within the very jurisdiction of the charging authorities, and whereas the Petitioner having exhausted the highest levels of that State's judicial process without gaining his proper redress/relief, exemplifies the extreme exceptional circumstances to warrant this Most High Court's review, and the issuance of petitioned writ of habeas corpus. See e.g., Ex Parte Royall, supra; United States ex rel. Parish, supra.

Petitioner believes that in consitutional questions of speedy trial violations via a petition for writ of habeas corpus, that Barker, supra, is/remains the controlling authority of the Court. The Barker Court well establishes the four (4) factors in weighing a decision of constitutional speedy trial right(s) violations. These factors (continuously re-stated as basis in various other judicial opinions) are:

(A) the length of delay
(B) the reason(s) for delay
(C) defendant's assertion of his right
(D) prejudice to the defendant

Factor (D), in and of itself, has three delineated elements to be assessed in light of the interests of defendants, which the speedy trial right is designed to protect. Barker, id., @532:

(i) to prevent oppressive pretrial incarceration
(ii) to minimize anxiety and concern of the accused
(iii) to limit the possibility that the defense will be impaired

As such, Petitioner now examines these factors in their relationship to this instant cause:

(A) Length of Delay

The delay of over eight (8) full years from the time of arrest, with the continuous pretrial detention of the Petitioner without proceeding to trial, "[h]as crossed the threshold dividing ordinary from 'presumptive prejudicial' delay." Doggett, supra, @651, 652 (citing, in part, Barker, supra). This "extraordinary [over eight (8) full years] lag, clearly suffices to trigger the speedy trial enquiry." Doggett, supra, @652 (footnote omitted) (emphasis added).

(B) Reason(s) for Delay

To justify the delay in bringing an accused to trial, said delay must serve some legitimate purpose. See e.g., United States v. Butler, 426 F.2d 1275, @1277 (1st Cir. 1970), cert. denied, 401 U.S. 978 (1970).

In this instant cause, the State of Florida Attorney General's Office gave only three (3) arguments in opposition to the Petitioner's State Supreme Court application for relief. Those were: that some nine (9) continuances were sought and granted to the "Petitioner"; that the "Petitioner" had expressly waived his right(s) to speedy trial; and that the Petitioner had been (then) twice deemed incompetent to stand trial. These arguments fail in four (4) specific respects: First, even though nine (9) continuances are shown in "trial" court memos as being awarded to the **defense**, these were not of the request, nor the desire of the "Petitioner." (Except in the specific instances where the Petitioner had

dismissed private counsel, expressly for failing to proceed to trial and/or advocate a correct defense of the Petitioner's innocence, thereby necessitating an extension of time from the "trial" court to secure new counsel. However, with the Petitioner giving the "trial" court these expressed reasons of the need for new counsel, the "trial" court was given constructive knowledge of the "Petitioner's" desire to proceed to trial). Being so, the majority of these continuances were wholly in opposition to the Petitioner's expressed desire to "have his day in court." Petitioner constantly requested of the "trial' court, and his counsel, for full disclosure of all discovery materials, in an effort to understand the reason(s) for the delays. These requested discovery materials were never/have never been fully delivered to the Petitioner. In no manner, can even nine (9) continuances attributable to the **defense** be considered justification for an over eight (8) full year delay in bringing the Petitioner to trial. Furthermore, the State attempts to claim example of the Petitioner's "expressed unwillingness" to proceed to trial, by and through Petitioner's motion for a stay in proceeding, when said motion for stay was specifically and singularly filed while the aforementioned application for relief based upon a constitutional claim of speedy trial violations was still pending before the Florida Supreme Court, said filing being submitted in 1996. It is absolutely ludicrous to use this singular motion to stay proceeding to infer an "unwillingness" to proceed to trial, when such was filed some seven (7) years after the Petitioner's arrest, and said application was a collateral submission regarding pending litigation challenging the very jurisdiction of the "trial" court itself. Secondly, the State fails to show why (or to make any response as to the Petitioner's point that) **no** action was taken in regards to any trial proceedings, from 1991 unitl 1994. Thirdly, the "waiver" of the Petitioner's speedy trial right(s) was entered by Petitioner's counsel without the Petitioner's knowledge, approval, signature, and/or discussion thereof (***NOTE*** Said counsel, Jack Wilkins, Bartow, Florida, is now a convicted federal felon, for the fraudulent representation of clients.***). The "trial" court

never examined the Petitioner in any colloquy as to whether the Petitioner intelligently and intentionally relinquished and/or abandoned his right(s) to speedy trial. Barker, supra, @525; Johnson v. Zerbst, 304 U.S. 458, @464 (1938) (also holding, "While an accused may waive [his] right [to speedy trial], whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon record." @465, [emphasis added]). There can be no justifiable claim by the State of Florida that the Petitioner ever knowingly, intelligently, and/or voluntarily abandoned his right(s) to speedy trial. Lastly, the State's claims of delay due to the Petitioner being declared incompetent, by the "trial" court's own order, fails, insofar as the Petitioner was twice ordered for evaluation to H.R.S., only to be returned to the "trial" court immediately upon completion of the minimum time requirement(s) for such involuntary commitment(s), deemed officially competent to stand trial. Still, no trial occurred. These two (2), three (3) month court ordered involuntary commitments cannot possibly be conceived as cause for an over eight (8) full year delay in bringing the Petitioner to trial. Petitioner asserts here that the "trial" court's orders of involuntary commitments were/are manipulative of the speedy trial process, and still fails to explain and/or justify the "hole in time" of no action taken in trial proceedings during 1991 through 1994. Furthermore, the current involuntary commitment of the Petitioner occurred without any medical and/or psychological examination(s), and with the misrepresentation of a dismissed private defense counsel. Petitioner maintains that the current involuntary commitment, too, is a manipulation of the speedy trial process and/or right(s) thereto. Regardless of Petitioner's competence or incompetence, the government may not justify such a delay in bringing an accused to trial merely by citing accused's incompetence, but must carefully and vigilantly protect the interests of both the incompetent accused and society. See e.g., United States v. Geelan, 520 F.2d 585 (9th Cir. 1975). However, Petitioner mainstays that he is, and has always been, both competent and most willing to stand

trial. It has been the "trial" court which refuses to go forward with any such trial. In fact, Petitioner has been constant in his opposition to defense counsel's position to offer only a plea of "not guilty by reason of insanity" (which denotes a guilt of action - to which this Petitioner adamantly denies), and of which the "trial" court is fully/wholly aware. Petitioner has come to believe that unless/until he offers such a plea of insanity to the "trial" court, that no trial proceeding will ever take place. (***NOTE*** Petitioner, due to his belief in/of the "trial" court's manipulation(s) of process wholly in his cause, and specifically in regards to involuntary commitments - objected to such, by action, in refusing to submit to any "trial" court appointed and/or affiliated doctors solely of its choosing. The "trial" court refused any request for an independent exam/evaluation, and hence, the method of Petitioner's present involuntary commitment by the "trial" court's direct order without any requisite examinations. ***)

Still, there remains no justifiable cause and/or reason for such an extraordinary (and grossly obscene) delay in the Petitioner's right(s) to speedy trial. See e.g., United States v. Aguirre, 994 F.2d 1454 (9th Cir. 1993).

(C) Defendant's Assertion of Right(s)

Petitioner showed a reasonable concern as to the nature of why he had/has not been afforded trial by the State Circuit Court, by and through his repeated demands for the "trial" court to order the delivery of full discovery materials to the Petitioner (which Petitioner could never seem to receive from any of his defense counsels), as well as expressing to the court Petitioner's reasons for the discharge of attorneys when said defense attorneys refused to move forward to trial. Petitioner made it abundantly clear to the "trial" court that he did not understand what the "hold up" in proceedings was, and wanted the discovery materials to investigate such for himself (certainly not the normal request of an incompetent person). Petitioner, unexposed and untrained in the art and practice of law, was wholly unaware of his right to demand speedy trial, until informed of such by a

"jailhouse lawyer," in 1995. However, at that point the State's violation(s) of the Petitioner's constitutional right(s) to a speedy trial had been so excessive by such an extraordinary length of delay, that a truly fair process of trial had become an impossibility. As a result, Petitioner was informed of, and formally asserted, those claims of speedy trial violations, pro se. For obvious reasons, Petitioner was incensed that all previous (private) counsel, and the State, had/have allowed his constitutional right(s) to speedy trial (and hence, due process) to be so overtly abridged.

The fact that the Petitioner, himself, did not vigorously assert his right(s) to speedy trial (directly) to the "trial" court, before his January 1996 petition to the Florida State Supreme Court, does not distiguish that the "trial" court was unaware of the Petitioner's desire to proceed to trial and prove his innocence. In truth, Petitioner repeatedly and expressly explained to the "trial" court that his reason(s) for the dismissal of counsel in 1994 and 1996, were in fact due to counsels' failure(s) to proceed to trial.

This still does not explain the "trial" court's failure to protect the Petitioner's constitutional right(s) to speedy trial and due process as obviated by the lack of trial when Petitioner had singular counsel from 1989 through 1994, and again from 1994 through 1996. No trial was ever/has ever been insisted upon by the "trial" court.

It is the constant holding of law that a waiver of a fundamental constitutional right based upon passive acceptance of delay is inconsistent with the pronouncements of the Barker Court, that a waiver of a constitutional right requires a finding that the right has been intentionally relinquished, and that every reasonable presumption should be indulged against it. See e.g., Johnson, supra, @464; Aetna Insurance Company v. Kennedy, 301 U.S. 389, @393 (1937); Upton, supra, @103.

> [T]he rule that the failure of the defendant to demand a trial gives rise to a finding of waiver (the demand - waiver rule) was rejected in Barker. That case teaches

> instead that the defendant is not obligated to bring himself to trial. The duty rests upon the state to bring prosecutions to a speedy conclusion. 407 U.S. 528, 92 S.Ct., at 2191. In any event, it is clear that the defendant's motion to dismiss on speedy trial grounds put both the government and the court on notice that they would be held accountable for delay after motion was made.
>
> Upton, supra, (citations omitted); see also, United States v. Bailey, 399 F.Supp. 526 (M.D.Fla. 1975).

In fact, how can a defendant's acquiesence of delay be determined if he is wholly unaware tht defense counsel has caused (in the most part) such? Doesn't the "trial" court still bear the ultimate responsibility to determine just when the delays have gone beyond any boundry of actual reasonableness, and express its own duty to (demand) go forth with trial?

> [C]ondoning prolonged and unjustified delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal prosecution, indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.
>
> Doggett, supra, @657.

Quite obviously, the very nature of the charges held against the Petitioner **should** warrant the very highest of prosecutorial priorities, and the State's desire to secure a conviction should be paramount - if any such weight of cause truly exists. The State, however, has not shown any such weight of conscience in this instant cause.

(D) Prejudice to the Defendant

Delay of over eight (8) full years must be considered a presumption of prejudice, and that such a length of delay is patently too long. See e.g., Arrant v. Wainwright, 468 F.2d 677 (5th Cir. 1972), cert. denied, 410 U.S. 947 (1973); United States v. Stone, 319 F.Supp. 364 (S.D.N.Y. 1970).

Consideration of prejudice to the accused's case for speedy trial purposes is not limited to the specifically demonstrable. Affirmative proof of particularized prejudice is not essential to every speedy trial claim. Doggett, supra, @655.

> [B]arker explicitly recognized that the impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony "can rarely be shown." 407 U.S., at 532, 92 S.Ct., at 2193. And though time can tilt the case against either side, see, id., at 521, 92 S.Ct., at 2187; Loud Hawk, supra, 474 U.S., at 315, 106 S.Ct., at 656, one cannot generally be sure which of them it has prejudiced more severely. Thus, we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker criteria, see, Loud Hawk, supra, at 315, 106 S.Ct., at 656, it is part of the mix of relevant facts, and its importance increases with the length of delay.
>
> Doggett, supra, @655, 656.

In this case, the extraordinary and grossly obscene over eight (8) full years loss of freedom to the Petitioner, without any trial, and continuously being a pretrial detainee in the specific custody and/or jurisdiction of the charging authorities, clearly

suffices to exemplify the oppressiveness of pretrial incarceration prohibited by the Barker Court. See also, Doggett, id., @652; Dickey, supra.

Also, it should be quite obvious to any objective inspection of this case, that the anxieties and concerns of the Petitioner have been maximized, not minimized as proscribed by the Barker Court. Petitioner's loss of employment (and any "up to date" employment skills) is beyond any reasonable expectation of redemption, even if/when Petitoner is released. The extreme disruption to the Petitioner's family life is wholly beyond measure, especially in light of the "cloud cast" by the very nature of the offenses charged. The extraordinary and excessive delay, added to said nature of the unproven offenses charged, have caused the Petitioner such mental anguish, that it has effected the need of (almost) superhuman strength to stave-off any permanent emotional and/or psychological damage from such unproven public charges and the resulting, continuous pretrial incarceration therefrom.

To believe that any physical evidence against the Petitioner (if ever any such existed/exists) is without the possibility of taint, and/or in the cumulative/alternative, remains "fresh" for the purposes of a fair and impartial trial; as well as any testimony to be given therein could possibly be without the question as to its veracity, given a memory's susceptibility to suggestion(s) and defect(s) over great expanses of time - exists far beyond the boundries of any conception of reasonableness.

The prejudice to the Petitioner after over eight (8) full years since arrest, without any form of trial, and in the continuous pretrial detention of the charging authorities - is complete. See e.g., Barker, supra; Dickey, supra; Doggett, supra.

There are collateral issues inherent in a speedy trial claim with a pretrial detention of such an enormous length. These are the constitutional questions of due process, **U.S. Const. amend. V, and XIV**; and cruel & unusual punishment, **U.S. Const. amend. VIII.**

Certainly, the due process applications to the Sixth Amendment are well established. Klopfer v.

North Carolina, 386 U.S. 213 (1967); Argersinger v. Hamlin, 407 U.S. 25 (1972); Barker, supra; Dickey, supra; Prince v. State of Alabama, 507 F.2d 693 (5th Cir. 1975).

Yet, the constitutional question of cruel & unusual punishment in such an immediate instance as this case presents, must be considered, and is (Petitioner believes) without precedent (as is the entire basic nature of this cause). Certainly, punishment without a conviction and/or adjudication of guilt, is wholly unconstitutional. Similarly, any pretrial detention and/or incarceration of over eight (8) full years without said conviction and/or adjudication of guilt must be defined as (unjust) punishment, and hence, in violation of the prohibitions of the Eighth Amendment.

> [A] man's physical freedom is precious and should not be taken away prior to conviction unless confinement is necessary to insure his appearance at trial. The right to bail, no less than, for example, the right to speedy trial and the right not to suffer an excessive sentence, is a fundamental right which states must protect and respect to the extent protected by the Eighth Amendment.
>
> United States ex rel. Siegal v. Follette, 290 F.Supp. 632, @634, 635 (S.D.N.Y. 1968).

The State of Florida has no legitimate basis to claim, nor has it ever made claim, that the Petitioner would fail to appear for trial (if such would have ever taken place). The extraordinary length of pretrial detention and/or incarceration of the Petitioner should have, in the minimum, triggered review(s) for the Petitioner's enlargement at numerous intervals of said pretrial detention and/or incarceration. To have failed in even this respect (by requiring said reviews to be asserted by the Petitioner, alone), the State of Florida (again) shows its immediate disregard for its ministerial responsibility and duty to safeguard an accused's constitutional guarantees.

VI.
CONCLUSION

The State of Florida has not shown any diligent "good faith" effort to bring the Petitioner to trial in a timely manner, acting only in (extreme) attempts to declare the Petitioner incompetent (involuntarily), and only to have such declarations of incompetency immediately rebuffed and/or contradicted by formal evaluations of (State) psychiatric services. Indeed, the State has shown nothing but bad faith, neglect, and possible malfeasance in its ignorance of the Petitioner's constitutional rights, to the extreme point where any expectations of having a fair trial are naught.

The Petitioner's current involuntary commitment to a "contracted" psychiatric care facility, instead of the normal State run facility, should raise serious question as to the constructive knowledge of and/or the manipulation of due process.

The Constitutional Amendments were designed to protect the fragile values of the vulnerable citizenry from overbearing concern(s) for efficacy. The protection of the individual against arbitrary governmental action is the great purpose of our "American Ten Commandments," The Bill of Rights - with an extra boost "off the bench" from the "sixth man," the Fourteenth Amendment.

The Petitioner herein meets, exceeds, and exemplifies the exceptional circumstances necessary for this Most High Court to review and rule on this instant application for relief. The Petitioner meets, exceeds, and exemplifies the prevailing standards established by the Barker Court in succeeding with a violation of speedy trial claim.

> [W]hen the government's negligence thus causes delay six times as long as that generally sufficient to trigger judicial review, [Barker citation omitted], and when the presumption of prejudice, albeit unspecified, is neither extenuated, as by the defendant's acquiescence, [Barker

citation omitted], nor persuasively rebutted, the defendant is entitled to relief.

Doggett, supra, @658 (footnotes omitted).

WHEREFORE, based upon the foregoing facts, argument, and citations of authority, the Petitioner hereby beseeches this Most Honorable High Court to grant the relief applied for herein, to issue a WRIT OF HABEAS CORPUS, commanding the immediate release and perpetual discharge of the Petitioner from the instant cause of action redressed herein: Tenth Judicial Circuit Court of the State of Florida, Polk County, Criminal Division Case Number: CF 89-3153-A1-XX.

Respectfully Submitted By:

Robert G Neal

ROBERT G. NEAL
NORTH FLORIDA EVALUATION & TREATMENT CENTER
1200 N.E. 55th BOULEVARD
BUILDING 7 POD A
GAINSEVILLE, FLORIDA 32641-2783

PRO SE

STATE OF FLORIDA)
)
COUNTY OF POLK)

NOTARY OATH

Before me, the undersigned authority, this day personally appeared **Robert G. Neal**, who first being duly sworn, says that he is the Petitioner in the above styled application to the Court, that he has read the foregoing ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS and has personal knowledge of the facts and matters set forth and alleged therein, and that each and all of these facts and matters are true and correct.

Robert G Neal
signature of petitioner

SWORN TO AND SUBSCRIBED before me this 9th day of February, 1998.

Brenda Ormsbee
NOTARY PUBLIC

BRENDA ORMSBEE
Comm. No. CC 543381
My Comm. Exp. Apr. 24, 2000
Bonded thru Pichard Ins. Agcy.
NOTARY SEAL

✓
personally known, or type of I.D. presented

Researched and Written By:

ERIC D. BANK DC# F-089580
AVON PARK CORRECTIONAL INSTITUTION
P.O. BOX 1100 MAIL# 712 DORM F1-119L
AVON PARK, FLORIDA 33826-1100

NEXT OF FRIEND

SWORN TO AND SUBSCRIBED before me this 12th day of February, 1998.

NOTARY PUBLIC

C. JOYNER
MY COMMISSION # CC 550291
EXPIRES: April 24, 2000
Bonded Thru Notary Public Underwriters

NOTARY SEAL

FLORIDA DEPARTMENT OF CORRECTIONS PHOTO I.D. PRESENTED

APPENDIX

AFFIDAVIT OF NEXT OF FRIEND

I, **Eric D. Bank**, do hereby declare and aver, under the pains and penalties of perjury, that the following statement in support of my NEXT OF FRIEND assistance for the **pro se** submission to this High court, by **Robert G. Neal**, is true and correct, representing the correct facts and chronological sequence of events which led me to assisting in this instant petition.

During the last half of 1995, this affiant was a pretrial detainee going through the (normal) judicial process in/of Polk County, Florida. While a detainee in/at Polk County's "old jail", and while utilizing that jail's law library for county prisoners and/or detainees, the Polk County Sheriff's Deputy in charge of said law library's operation(s), approched me, requesting tht I speak with another county pretrial detainee, one **Robert G. Neal**. This Sheriff's Deputy, **Mr. Morgan**, made such a request based upon his knowledge of this affiant's established record as a certified law clerk from the Florida Department of Corrections (hereinafter, D.O.C.), and also with the knowledge of this affiant's past success with pro se litigation(s) in the Polk County Circuit Court system. Upon such request of this affiant, affiant stated that there was truly very little he (affiant) could do from the county jail (for anyone): as affiant was (surely) about to return to prison; the legal research materials available at the county jail were wholly inadequate; and that affiant would, in all likelihood, not remain at the county jail long enough to assist in any pro se applications for redress to its full completion. **Deputy Morgan** informed this affiant that the man in question "seems to be getting a really raw deal," that the man had been in county jail (at this specific point in time) for some six and one-half (6 1/2) years, without trial, and that "his paid attorneys haven't done squat [sic] for him." This affiant, finding it hard to believe that anyone in this country could possibly be held without a trial for such a length of time, stated such to **Deputy Morgan**, and agreed to speak with the man.

Affiant had meetings with **Petitioner Neal** at the Polk County Jail ("old jail") law library, on numerous occasions and on a weekly basis, through March of 1996. Affiant agreed to assist **Petitioner Neal** in pursuing his constitutional application for redress, with CAVEAT, that success of such is impossible to predetermine. Affiant also (correctly) stated that all available State remedies must be exhausted before making any Federal Court submission(s), and that the likelihood of success in that (State) venue was very slim, due to the nature of the charges, for such would simply be "politically incorrect" for these times. Affiant also gave CAVEAT, that he (afiant) was not an attorney, and that all submissions would be **pro se** submissions (fully explaining what "pro se" means to **Petitioner Neal**). This affiant also explained that the application for relief to the Florida Supreme Court would be a "naked" attempt for relief, "off the top of my head," as the county jail's law library was functionally useless for these specific purposes; but that a constitutional claim of speedy trial violation(s) after over (then) six and one-half (6 1/2) years of pretrial detention, without any form of trial, would be enough to garner the State Supreme Court's jurisdiction, and if resultantly denied the requested relief - it would thereby constitute the exhaustion of his State remedies to any such claim. Affiant further gave CAVEAT, that once affiant was returned to the D.O.C., affiant would be at the whim of the prison officials' approval in continuing to assist the Petitioner.

Affiant came to an agreement to give his unmitigated assistance to the Petitioner: where the Petitioner convinced this affiant of his innocence; Petitioner showed a complete functional illiteracy in the art and practice of law (insofar as Petitioner had below basic knowledge of research techniques), and an extreme difficulty in discerning the meaning(s) of many legal opinions (often taking the opposite meaning of what was truly rendered); and whereas the Petitioner's skills in communicating his thoughts through the written word were/are below any acceptable standard of the courts/Courts.

As such, this affiant agreed to assist in, and has hence completed, this instant application before the High Court.

Affiant further avers that the contentions of this instant application to the Court are wholly those of the Petitioner, that written exchanges between the affiant and the Petitioner completely and definitively covering the research, comprehension, and composition of this instant application, have been done and completed - insofar as: the answering of all questions, inserting of any needed additions, deletion of any improper and/or incorrect information, and the agreement that said written document was indeed complete. Affiant also avers that said communication between himself and the Petitioner remained constant and continuous (albeit slow) throughout the entire process of construction of this instant submission to the Court, and remained wholly in accordance with the legal redress wishes of the Petitioner.

Affiant further avers that no compensation for this assistance was ever contracted, received, and/or expected for the service of preparing this instant application to the Court.

Affiant therefore invokes the next of friend privilege of the Court, by and through the authority of this Court's holding in Johnson v. Avery, 393 U.S. 483 (1969), for this instant **pro se** application of extraordinary relief.

So Sayeth I,

ERIC D. BANK DC# F-089580
AVON PARK CORRECTIONAL INSTITUTION
P.O. BOX 1100 MAIL# 712 DORM F1-119L
AVON PARK, FLORIDA 33826-1100

NEXT OF FRIEND

STATE OF FLORIDA)
) NOTARY OATH
COUNTY OF POLK)

Before me, the undersigned authority, this day personally appeared **Eric D. Bank**, who first being duly sworn, says that he is the affiant in the above styled affidavit, that he has read the foregoing AFFIDAVIT OF NEXT OF FRIEND and has personal knowledge of the facts and matters set forth and alleged therein, and that each and all of these facts and matters are true and correct.

SWORN TO AND SUBCRIBED before me this 12th day of February, 1998.

NOTARY PUBLIC

C. JOYNER
MY COMMISSION # CC 550291
EXPIRES: April 24, 2000
Bonded Thru Notary Public Underwriters

NOTARY SEAL

FLORIDA DEPARTMENT OF CORRECTIONS PHOTO I.D PRESENTED